IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

MFA.No. 348 of 2001()

OA.83/1998 of FOREST TRIBUNAL, KOZHIKODE
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APPELLANTS/APPLICANTS:
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1. SAID, S/O.MUHAMMED, KOTTARATHIL HOUSE,
   POOVARANTHODE P.O.,
   KOODARANHI VIA., KOZHIKIDE.

2. SAINUDDEEN, S/O.MUHAMMED, KOTTARATHIL HOUSE,
   POOVARANTHODE P.O., KOODARANHI VIA, KOZHIKODE.

3. MOIDEEN, S/O.MUHAMMED, KOTTARATHIL HOUSE,
   POOVARANTHODE P.O., KOODARANHI-VIA, KOZHIKODE.

4. MOIDEEN, S/O.SAINUDDEEN, KOTTARATHIL HOUSE,
   POOVARANTHODE P.O., KOODARANHI-VIA, KOZHIKODE.

BY ADV. SRI.BABU JOSEPH KURUVATHAZHA

RESPONDENTS/RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY,
   THIRUVANANTHAPURAM.

2. CUSTODIAN OF VESTED FORESTS AND CONSERVATOR OF
   FORESTS, OLAVAKKODE, PALAKKAD.

BY SPL.GOVT.PLEADER (FOREST) SRI.M.P.PRAKASH

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 04/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

M.F.A.No.348 OF 2001

Dated 4th September, 2007

JUDGMENT

Koshy,J.

This appeal is filed by the applicants in O.A.No.83/1998. It is their case that they were cultivating the property when the Kerala Private Forests (Vesting & Assignment) Act (in short `the Act') came into force. But, in 1998 forest officials published a notification stating that the property in question was covered by the Act and is vested under Section 3(1) of the Act as it is a private forest. Immediately on publishing the notification, they filed an application before the Forest Tribunal stating that claims of the forest officials are not correct and they are illegally restraining cultivation in the property and the property in question is not a private forest. It is also contended that even if it is a private forests, they are entitled to exemption under Sections 3(2) and 3 (3) of the Act as they were personally cultivating the property. Even though it was contended that the land was covered under the Madras Preservation of Private Forest Act (MPPF Act), no notification under the MPPF Act was produced declaring that this part of property is covered by MPPF Act. RW1, the forest official, deposed that records are with the revenue officials, but, it was not produced. The applicants mainly relied on Ext.X1 series which are survey reports to show that the property was

a cultivated property when the Act came into force. The Tribunal in the course of discussion observed that Ext.X1 series are in the year 1998, but, actually the survey was conducted before the Act came into force. If the land is covered by MPPF Act, it is for the forest officials to produce copy of the notification. The question is whether on the relevant date, when the Act came into force, the property in question was a private forest. It is contended that if the land was not a private forest as defined under the Act, there is no question of vesting the same under Section 3(1) of the Act and forest officials have no jurisdiction over the same. Then only the question of title will come. Whether it was cultivated property on the date when the Act came into force, whether the land was vested under Section 3(1) of the Act etc. were not considered by the Tribunal in detail. Tribunal has to find out whether it was a private forest as defined under the Act and if the issue is found in affirmative in favour of the State, then whether applicants are entitled to exemption under Section 3(2) and 3(3) of the Act are also to be found out. If it was a private forest, it is for the applicants to plead and prove that they are entitled to exemption under Sections 3(2) and/or 3(3) of the Act.

Since the question whether it was a private forest on the relevant date was not considered, the matter is remanded. We are

not making any observation on the merits of the matter de novo. Parties to appear before the Tribunal on 3.12.2007. Both parties are allowed to adduce further evidence on the matter.

J.B.KOSHY
JUDGE

K.HEMA
JUDGE

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